



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: United States Coast Guard--Request for
Advance Decision

File: B-233041.3

Date: October 20, 1989

DIGEST

Although contracting agency improperly allowed upward correction of bid to include additional profit, bond costs and insurance costs when the costs were not adequately substantiated, there is no evidence of fraud, bad faith or mutual mistake, the resulting contract was not plainly or palpably illegal, and the contractor may be paid at the contract price where the agency determines that it is not in the government's best interest to terminate the contract.

DECISION

A United States Coast Guard disbursing officer has requested an advance decision regarding the propriety of using funds appropriated to the Coast Guard to pay for work completed under a contract that we have previously found was awarded at an overstated contract price. For the reasons given below, we conclude that the contractor may be paid at the contract price for work satisfactorily completed.

This matter arises out of our decision in Lash Corp., 68 Comp. Gen. 232 (1989), 89-1 CPD ¶ 120. In that decision, we denied Lash's protest against the Coast Guard's determination to permit upward correction of the bid submitted by Construction and Rigging, Inc. (CRI), in response to invitation for bids No. DTCG50-88-B-65023, for repair of a fuel pier at the Coast Guard Support Center in Kodiak, Alaska. Although we denied the protest, we found that the \$47,393 CRI claimed for additional profit, bond costs and insurance costs was not adequately substantiated and that the contract price thus should not have included this additional amount.

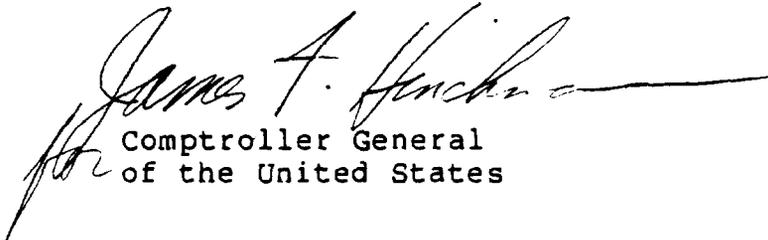
The Coast Guard considered terminating CRI's contract for the convenience of the government based on the overstated contract price, but informs us that it has concluded that

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termination would not be in the government's best interest, since the contract has been substantially performed. The disbursing officer asks whether, in these circumstances, the contractor may be paid at the contract price, including the \$47,393 at issue in the protest to our Office, for work satisfactorily performed under the contract.

The award of a contract under a sealed bid procurement must be based upon the most favorable cost to the government, assuming the low bid is responsive and the bidder is responsible. See Detyens Shipyards Inc., B-229845, Apr. 19, 1988, 88-1 CPD ¶ 382; Eastern Technical Enterprises, Inc., B-228035, Oct. 27, 1987, 87-2 CPD ¶ 400. An award at an improper price generally is an improper award, see generally Afghan Carpet Servs., Inc., B-231348, Sept. 9, 1988, 88-2 CPD ¶ 224 (award at unreasonable price), and such a contract properly may be terminated under the standard termination for convenience clause. See Nationwide Roofing and Sheet Metal Co., Inc. v. United States, 14 Cl. Ct. 733 (1988); Amarillo Aircraft Sales & Servs., Inc., 63 Comp. Gen. 568 (1984), 84-2 CPD ¶ 269; see also Afghan Carpet Servs. Inc., B-231348, supra.

Nevertheless, we have previously recognized that an improperly awarded contract need not always be terminated. See, e.g., Hartridge Equipment Corp., B-228303, Jan. 15, 1988, 88-1 CPD ¶ 39. Rather, the appropriate remedy depends upon all the circumstances surrounding the procurement, including, but not limited to, the seriousness of the procurement deficiency, the extent of performance, the urgency of the procurement, and the impact of the recommendation on the contracting agency's mission. 4 C.F.R. § 21.6(b) (1989). Here, since it is not in the government's interest to terminate the contract; the contract price, even as overstated, was still the lowest bid; there is no evidence of fraud, bad faith or mutual mistake; and the contract is not plainly or palpably illegal, see generally Southwest Marine, Inc.--Request for Reconsideration, B-219423.2, Nov. 25, 1985, 85-2 CPD ¶ 594; we believe that the contractor may be paid at the contract price for work accepted and satisfactorily performed under the contract.


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